No. 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal From the Supreme Court of Georgia

APPELLANTS' RESPONSE TO BRIEF OF THE UNITED STATES

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ARGUMENT

The brief of the United States takes the p that regardless of what expenditures appellant may make, the courts below were in error in section 2, Eleventh of the Railway Labor Act stitutional, in holding the union-shop agreeme tween appellant unions and the railroad appel valid, and in enjoining the enforcement of the shop agreements, and that the decision below

therefore be reversed. With such a
Government we are of course in accor
ernment's brief suggests also that thi
and should not determine whether the
volved violate constitutional rights
appellees, because such expenditures
spectrum" of union activities some
"delicate constitutional issues", and
possible remedies if the expenditur
With such suggestions we disagree.

**I. Congress Contemplated That the Union
Expenditures and at Least Three Tim
Restrict Them or to Give Dissident
Against Them**

As we pointed out in our main brief
the enactment of section 2, Eleventh
eration by the Congress, opposition
was expressed both in hearings and or
gress on the ground that unions mak
the nature here involved.[1] Congress
restrictions and enacted the bill.

Prior thereto, as we pointed out i
(pp. 29-30), in considering the legisla
the Labor-Management Relations
U.S.C., secs. 141 et seq.), there was
discussion, at hearings and on the fl

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[1] Hearings on S. 3295, 81st Cong., 2d Sess
Labor and Pub. Welfare, pp. 173-4, 316-7; 96

[2] Hearings, Sen. Comm. on Labor and Pub.
Cong., 1st Sess., pp. 726, 796-819, 1004, 1452
2146, 2150, 2401; Hearings, House Comm. o
Amendts. to N.L.R.A., 80th Cong., 1st sess.,
1326, 1624-5, 2260, 3015, 3057, 3650, 3701,
3462, 3669, 4135, 4885, 4887-9, 5110, 6436-8, 6

of expenditures of the nature here involve
(in some instances these very appellant
these very expenditures) that had or n
union-shop agreements, and argument on
to use union-shop agreements to obtain fu
purposes, and yet the only restriction ena
amendment to the Federal Corrupt Practi
U.S.C., sec. 610). Some of this legislativ
reviewed in *United States* v. *C.I.O.*, 335 U.
20 where the Court pointed out that sim
had been made in the course of enactin
Labor Disputes Act of 1943 to have Co
minority members rights against the exp
union funds to espouse political causes opp
minority. Hearings on H.R. 804 and H.R.
comm. of the Comm. on Labor and Ed., 78t
sess., 117-8, 133; 89 Cong. Rec. 5334, 579
Rec. 6440.

In 1958, shortly after the decision of th
Court of North Carolina in *Allen* v. *So. R*
N.C. 491, 107 S.E. 2d 125, a case involving
parties, these same issues, but reaching a
opposite that of the Supreme Court of
amendment (prompted by the *Allen* decisio
ing legislation was proposed that would
dissident members of a union under a
agreement the right to have their dues us
collective bargaining and related purpos
amendment was defeated.[3] Again there wa
able discussion on the floor of Congress.[4]
of our main brief.

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[3] 104 Cong. Rec. 11330, 11347.

[4] 104 Cong. Rec. 11274-5, 11338-9, 11343-4

Once again, in enacting the Labor-Management Reporting and Disclosure Act of 1959 Congress had before it this question, and again restrictions on expenditures of the nature here involved were not imposed. See pp. 48-49 of the Brief of the United States.

It is thus abundantly plain that Congress has repeatedly had before it the question of restricting expenditures of funds by unions having union-shop agreements, the very types of expenditures here involved, and has refused to enact such restrictions. Plainly it was known to Congress that these unions engage in these activities and Congress has refused to restrict them while permitting a union ship. There can be no escape from the conclusion that when Congress adopted the policy of permitting railroad unions to negotiate union-shop agreements, that policy was to permit such agreements by unions functioning as they had been functioning for many years and that the permission was not conditioned upon the unions adopting radical and impractical revisions in the way they operate.

II. This Case Does Not Involve "Delicate Constitutional Issues" Concerning a "Broad Spectrum" of Union Activities

If the issue of the legality of the questioned union expenditures were here in a different posture,—if this case involved the validity of Congressional restrictions on expenditures of the nature here involved,—then in truth there would be involved "delicate constitutional issues" concerning a "broad spectrum" of union activities. *United States* v. *C.I.O.*, 335 U.S. 106, 120. Congress has imposed restrictions on what unions may do, and perhaps it may impose others. *United States* v. *U.A.W.-C.I.O.*, 352 U.S. 567, 598 (footnote). Such

statutorily imposed inhibitions on the freedom of those associated in a union would thus raise issues which this Court, in accord with its repeatedly stated principles, would avoid adjudicating unless absolutely necessary, out of "a just respect for the legislature", a coordinate branch of the government. *Ex parte Randolph*, 20 Fed. Cas. No. 11,558 at p. 254, quoted in *United States* v. *C.I.O.*, 335 U.S. 106, 125-6 (concurring opinion).

But the nature or variety of the union activities to which a dissident union member may be opposed is not relevant to the constitutionality of his being subject to a union shop and being required to pay dues, once it be held that his employment can constitutionally be conditioned on his paying dues part of which is spent for any purpose he opposes. See our main brief pp. 48-52. As we there explained, the nature of the ideas or activities opposed by the dissident member has no bearing on the legality of the expenditure, assuming of course that the expenditure is otherwise lawful as not in contravention of statute and not ultra vires.

There is no contention here that the expenditures involved are ultra vires or unlawful for any reason other than that they support causes opposed by the individual appellees. In the trial court, for example, the plaintiffs expressly disavowed any contention that the political expenditures here involved were violative of the Corrupt Practices Act. R. 232. If the expenditures were claimed to be ultra vires or otherwise unlawful a remedy would be afforded by section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., sec. 501.

The contention of the individual appellees is not that there is anything innately wrong or unlawful in the activities of the unions in question but that they are wrong, and unconstitutional, only because they are financed in part with resources to which the disagreeing minority contributed. If the Court agrees, as we do, with the views of the United States that section 2, Eleventh of the Railway Labor Act is constitutional and that the union-shop agreements are lawful agreements, we have here simply a dispute whether certain expenditures by a union violate the constitutional rights of certain people. There are thus absent the considerations on which are bottomed the doctrine pursuant to which this Court has sometimes gone to rather extreme lengths to avoid deciding constitutional issues, which we have seen is a just respect to or a due regard for a coordinate branch of the Government. In passing on the constitutionality of the expenditures the Court would not be risking undoing any work of Congress or the executive branch of the Government. It is only the unions and their dissidents who might feel aggrieved by the decision, and neither of them is a coordinate branch of the Government.

Nor may it be said that a skimpy record was developed in the courts below. The record filed here must be one of the exceptionally large ones.[5] Very clearly, the plaintiffs in the trial court put into the record everything they thought would be of the remotest help to them on any issue. Further proceedings in this case are hardly likely to cast any additional light on any of the issues, and in view of the material set forth on

[5] We were advised by the clerk of the court below that the record in this case is by far the largest ever filed in that court,—more than twice as large as the next largest.

pages 87-99 and 102-9 of our main brief, and in light of the opinion of the court below on the first appeal to that Court in this case (*Looper* v. *G. S. & F. Ry. Co.*, 213 Ga. 279, 99 S.E. 2d 101; App. A to Jurisdictional Statement), the value of such further proceedings is, to say the least, difficult to perceive for other reasons.

III. The Expenditures Are Clearly Lawful

As we have seen above, it is not even contended that the expenditures involved are unlawful for any reason other than the fact that the unions making them have a union shop. Such expenditures, by unions not having a union shop, are not challenged. Nor does the Government suggest any invalidity of the expenditures; it simply says that if they are invalid the plaintiffs below misconceived their remedy and that regardless of their validity or invalidity section 2, Eleventh is constitutional and the union-shop agreements valid.

We find it difficult to understand an argument that expenditures by a union, otherwise lawful, might infringe First Amendment rights because the union has a union shop. Nothing that the union publishes or espouses or otherwise supports prevents any dissident member from doing anything, while, on the other hand, restricting the majority in engaging in such activities might well infringe their First Amendment rights. See *United States* v. *C.I.O.*, 335 U.S. 106, 120-2, 139. The individual dissident is as free as before to read what he wants, to think what he wants, to listen to what he wants, to say what he wants, etc.; the only requirement of the union shop is that he contribute to the funds of the union which get spent as a majority wishes within such limitations as Congress sees fit to and may constitutionally impose. If any other condition on con-

tinued employment is imposed, then under the un
shop agreement itself, as well as under section 2, E
enth, the individual would not have to comply with
union shop.

Indeed the problem, if there is one, is not a prob
raised by a union shop. It is now settled that
ployees of a railroad employer and certain other
ployers must accept collective bargaining by a re
sentative chosen by the majority. Even in the abs
of a union shop, the motivation for belonging to a u
to have a direct voice in determining its policies
cerning the wages and working conditions of thos
represents may be as compelling as a union shop.
union shop raises First Amendment issues, why
those who belong because they desire direct partic
tion in the affairs of their collective bargaining re
sentative that fixes by agreement their wages and w
ing conditions any less protected than those who de
to work for a railroad that has a union-shop ag
ment? Plainly these questions are not engendered
union shop. The extensive discussion in *United St*
v. *C.I.O.*, 335 U.S. 106 and in *United States* v. *U.A.*
C.I.O., 352 U.S 567 was based on considerations no
lated to a union shop and assumed that the po
should be one determined by Congress within the
stitutional limitations protecting the majority.

The Government's brief suggests the possibilit
"contracting out" of a portion of the dues becaus
political activities, as is provided by statute in G
Britain. Brief, pp. 29-30, 45-6. But any such re
for dissidents is obviously a legislative matter wi
the discretion of Congress; it is simply impossbl
find any such affirmative requirements in the Co
tution. Some of the Justices of this Court have re

nized the possible desirability of such or similar legislation, but never has it heretofore been suggested as a constitutional requirement. *United States* v. *U.A.W.-C.I.O.*, 352 U.S. 567, 597-8; *United States* v. *C.I.O.*, 335 U.S. 106, 149-50.

In the last two cases cited the opinions also adverted to the British legislation, and we deem it advisable to clear up what may be some misconceptions about that system of "contracting out" of political contributions.

The amount of the "political levy" concerning which a trade unionist in Great Britain may "contract out", that is, not pay upon filing a form declaring he does not want to pay, is the amount that the union credits to its "political fund". This amount has grown in recent years so that it has now reached perhaps a shilling per year in most unions and ranges up to two shillings per year per member. The union disburses this money in its political fund for two types of purposes; first, to pay the affiliation fee of the Labour Party for its members, and second, to make contributions to candidates for political office to help meet their campaign expenses[6] or to subsidize them as members of Parliament.[7] But only these disbursements are limited to the "political fund"; all other activities in the political

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[6] In Great Britain only the candidate and his election agent may make direct campaign expenditures, and the permissable amounts of such expenditures are strictly limited. "Parliamentary Elections in Britain", British Information Services, I.D. 1314, September 1958.

[7] Martin Harrison, "Trade Unions and the Labour Party Since 1945", George Allen and Unwin Ltd., London, 1960, pp. 61, 65. (Also available in an edition printed in Great Britain, bound in the United States, Wayne State University Press, Detroit, 1960.)

or legislative realm are financed from the union eral funds, "no matter how controversial."[8]

Many of the union activities complained of case are carried on by British unions through the their general funds, not their political funds. British unions, like ours, have union publication in the form of periodicals and pamphlets; thes the payment of the "political levy", espouse the of political candidates, support the policies Labour Party, and the like.[9] British unions no support the Labour Party other than by affiliatio ments, but it is accepted that they should do so.[10] of them spend substantially more than their politi come on political matters, and the propriety o activities is apparently not questioned.[11]

With respect to legislative activities the situa somewhat different from that here both because difference in the legislative procedure and becau trade union members of Parliament speak f unions in Parliament.[12] It is sufficient to point ou British unions, through expenditures from thei eral funds, and British unions that have no po funds, devote considerable energies (and nece expenditures) to so-called non-bargaining matte cluding representations to Parliament and branches of the government and the exposition o

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[8] Harrison, op. cit., pp. 56-7.

[9] Harrison, op. cit., pp. 46-8, 57-8, 125-6.

[10] Harrison, op. cit., pp. 65-6.

[11] Harrison, op. cit., p. 90.

[12] Harrison, op. cit., pp. 292, 299, 332.

policies and views on legislation.[13] It is the conclusion of a recent British study that a union "cannot fully represent its members without mixing in politics,"[14] and that "political or revolutionary strikes apart, trade union political action could be little more than an oratorical gesture without the backing of substantial finance."[15]

The recent study of political activity by British unions reached a conclusion remarkably similar, even in language, to the argument on pages 53-62 of our main brief, especially on pages 61-2. With respect to the contention that politics should be left to the politicians and unions should confine themselves to seeking higher wages and better conditions, the statement is made:[16]

> "Such judgments spring either from woolly thinking or from a complete misapprehension of trade unionism. The unions have never been wholly isolated from politics, even in the days of purest *laisser faire*. In 1867 the Trades Union Congress found itself involved at birth with the Royal Commission on the Trade Unions. By the end of the century the unions were pressing for the State to introduce regulation of sweated labour, improved safety regulations, even nationalization. Such essentially industrial aims could not be achieved without the intervention of the State.
>
> "Today there is less possibility than ever of a union avoiding involvement in politics. Even if we accept that the mission of trade unionism is just to 'win higher wages and better conditions'

[13] Harrison, op. cit., pp. 125-6, 328, 331.

[14] Harrison, op. cit., pp. 331-2; cf. our main brief, pp. 53-62.

[15] Harrison, op. cit., p. 55.

[16] Harrison, op. cit., pp. 13-14.

the idea that these can be won without
into 'politics' bears no relation to reality
activities of government have multipli
point where Ministers influence wage s
in nationalized industries, and mediate
disputes in private industry, politics a
conditions' have become inextricably li
Far from keeping the unions at a distan
ments continually seek their opinion
range of questions. Union representat
figure on innumerable committees in
and on every Royal Commission. Toda
thinkable that this movement, which
hailed by Sir Winston Churchill as an es
realm, should become 'non-political' in th
which some of its critics use the term.

"But the unions are more than simple
ers, caught up in the political battle.
combatants. Most of them are in direc
ship with the Labour Party; the decisio
1899 has led them a long way. 'Politic
has meant not only electing working class
of Parliament and 'winning better condi
making pronouncements on education a
and helping to shape Labour's policy o
weapons and a host of other issues whi
tenuous connection at best with the unio
trial interests."

It seems fair to conclude that the net eff
British system in substance is simply to perm
member to "contract out" of contributing
spent for purposes for which the Corrupt
Act prohibits the expenditure of *any* union fu
as federal elections are concerned. But wh
agrees or disagrees with the wisdom or suff
the British solution, we submit such solution,
the limited restrictions of the Corrupt Prac

or any other accommodation of these conflicting
ests, or no solution, is a matter for legislative
mination and not a constitutional command. The
expenditures here involved are otherwise lawfu
the fact that the unions have a union shop do
render them unconstitutional as infringements of
Amendment rights of anyone. Accordingly, th
cision below should be reversed and the case rem
with instructions to dismiss the complaint.

CONCLUSION

It is difficult to understand the Government's
of concern with the implications of its suggestion
"delicate constitutional issues" are involved. I
statement that "money talks" may result in a
clusion that the expenditure of money from a
to which an individual has contributed deprives
individual of First Amendment rights if the ex
iture promotes causes opposed by the individual,
as we pointed out in our reply brief (p. 9) the
issues would be raised by the Government's exp
ture of funds contributed to by atheists and isol
ists for chaplains in the armed forces and Vo
America. Examples could be multiplied. Surel
the limitations of the First Amendment are at
as binding on the Government as they are on u
and are at least as applicable to funds raised b
coercive power of taxation as they are to funds
by whatever inducements there may be to union
bership.

The Government's failure to discuss such im
tions of its suggestion was not due to ignoran
their existence nor to lack of time. We pointed
out in our reply brief. It was last June whe

Court called the attention of the Attorne
the right of the United States to inter
participate in this case as a party. 28
Instead of filing a brief within the time
Rule 41(1), the following September the
filed a motion for leave to intervene, whic
promptly granted. The due date of th
became November 9, the day after electi
Department apparently found this time
and shortly before its expiration applied
sion of time to November 25, stating tha
its brief consultations with certain high o
Government were required. Seemingly t
the preceding June had been inadequa
purpose. The application for extension
denied, but a renewed application for an
November 19 was granted.

Plainly the Government has had and
ample time for consultation and deliberat
shows no concern over or even interest in
tions mentioned above of its suggestion t
constitutional issues" may be involved. W
this lack of concern results either from
conviction that such issues are genuinely
from its conviction that their resolution
on the side of the validity of the expendit

As we stated at the outset, we are in ac
Government's views that section 2, Elev
stitutional, that the union-shop agreeme
are valid agreements, and that the enforc
agreements should not be enjoined and wa
enjoined. We submit that the expenditu
do not infringe any First Amendment righ

that the decision below should be reversed, a
remanded with instructions to dismiss the

Respectfully submitted,

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December 15, 1960